

MILPERSMAN 1910-220

LIMITATIONS ON SEPARATION ACTIONS

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1. **Limitations.** A member may not be separated on the basis of:

CONDUCT that has been...	EXCEPT WHEN...
the subject of judicial proceedings resulting in an acquittal or action having the effect thereof,	<ul style="list-style-type: none"> • such action is based upon a judicial determination not addressing the guilt or innocence of the respondent (nolo contendere, deferred prosecution, etc.). • the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary of the Navy (SECNAV) in the Best Interest of the Service (BIOTS), <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • the acquittal from the judicial proceedings was based on a finding of not guilty only by reason of lack of mental responsibility. Members in this category normally shall be separated under BIOTS (see MILPERSMAN 1910-164) unless separation for disability (see MILPERSMAN 1910-168) is appropriate.
the subject of an administrative separation (ADSEP) proceeding resulting in a final determination by a separation authority (SA) that the member should be retained,	<ul style="list-style-type: none"> • there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding, <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • there is newly discovered evidence that was not reasonably available at the time of the prior proceeding.

<p>subject to a prior administrative board in which the board found that the evidence did not sustain the allegations (finding of no misconduct or other reason),</p>	<ul style="list-style-type: none">• the conduct is the subject of a rehearing ordered on the basis of fraud or collusion by the respondent.
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